

## **IC 36-9-23**

### **Chapter 23. Municipal Sewage Works**

## **IC 36-9-23-1**

### **Application of chapter**

Sec. 1. This chapter applies to all municipalities.

*As added by Acts 1981, P.L.309, SEC.96.*

## **IC 36-9-23-2**

### **Municipal powers**

Sec. 2. A municipality may:

- (1) acquire, construct, improve, operate, and maintain sewage works under this chapter;
- (2) acquire, by gift, grant, purchase, condemnation, or otherwise, all lands, rights-of-way, and other property that are necessary for the sewage works;
- (3) issue revenue bonds to pay the cost of acquiring, constructing, and improving the sewage works and property; and
- (4) lease sewage works from a person, an entity, a corporation, a public utility, or a unit for a term not to exceed fifty (50) years.

A sewage works leased under this section is subject to IC 5-16-7.

*As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.35-1990, SEC.68.*

## **IC 36-9-23-3**

### **Supervision and control**

Sec. 3. The construction, acquisition, improvement, operation, and maintenance of sewage works under this chapter shall be supervised and controlled by the municipal works board. However, the municipal legislative body may, by ordinance, transfer the powers and duties of the works board under this chapter to:

- (1) a sanitary board established under section 4 of this chapter; or
- (2) the utility service board, if the municipality has such a board operating one (1) or more municipally owned utilities.

*As added by Acts 1981, P.L.309, SEC.96.*

## **IC 36-9-23-4**

### **Sanitary board**

Sec. 4. (a) A sanitary board established under this chapter consists of:

- (1) the municipal executive; and
- (2) two (2) persons appointed by the municipal legislative body, one (1) of whom must be a registered professional engineer.

The legislative body may not appoint any paid or unpaid municipal officer or employee to the board.

(b) One (1) of the original appointees to the sanitary board serves for a term of two (2) years, and the other serves for a term of three

(3) years.

(c) When the term of a member of the sanitary board expires, a successor shall be appointed for a term of three (3) years in the manner prescribed by subsection (a).

(d) Vacancies on the sanitary board shall be filled for the unexpired term in the manner prescribed by subsection (a).

(e) The municipal executive is the chairman of the sanitary board.

(f) The sanitary board shall select a vice chairman from its members, and shall select a secretary and a treasurer, who need not be members of the board. However, the board may combine the offices of secretary and treasurer into a single office of secretary-treasurer. The officers selected under this subsection serve at the pleasure of the board.

(g) Each member of the sanitary board is entitled to the compensation, if any, that is fixed by:

(1) the executive, with the approval of the legislative body, in a city; or

(2) the legislative body, in a town;

as a salary or as payment for meetings attended. Each member is also entitled to payment for reasonable expenses incurred in the performance of his duties.

(h) The compensation of the secretary and treasurer of the sanitary board shall be fixed by:

(1) the executive, with the approval of the legislative body, in a city; or

(2) the legislative body, in a town.

(i) The municipal legislative body shall fix the bond required of each member of the sanitary board and of the treasurer of the board. These bonds shall be filed with the county recorder under IC 5-4-1-5.1.

(j) The sanitary board may establish rules and bylaws for its own government.

*As added by Acts 1981, P.L.309, SEC.96.*

### **IC 36-9-23-5**

#### **Board defined**

Sec. 5. As used in the following sections of this chapter, "board" means:

(1) the municipal works board; or

(2) if the municipality has transferred the powers and duties of the works board under section 3 of this chapter, the:

(A) sanitary board; or

(B) utility service board;

to which those powers have been transferred.

*As added by Acts 1981, P.L.309, SEC.96.*

### **IC 36-9-23-6**

#### **Contracts**

Sec. 6. (a) The board may enter into all contracts or agreements necessary or incidental to the performance of its duties and the

execution of its powers under this chapter. However, the board may not obligate itself or the municipality beyond the extent to which money has been or may be provided under this chapter.

(b) A contract relating to the financing of the acquisition or construction of any sewage works, or to any trust indenture authorized by this chapter, is not effective until it is approved by the municipal legislative body.

(c) A contract or an agreement with any contractor or contractors for labor, equipment, or materials shall be let and entered into under the statutes governing the letting of contracts by agencies of municipalities.

(d) The board or any public utility (as defined in IC 8-1-6-3) contracting with the board for the treatment, purification, or disposal in a sanitary manner of liquid and solid waste, sewage, night soil, or industrial waste may contract with a water utility furnishing water service to users or property served in the municipality or by the public utility to do the following:

- (1) Ascertain the amount of water consumed.
- (2) Compute the amount of the charge to be billed for sewer services to each user or property served.
- (3) Bill and collect the amounts due for sewer services.
- (4) Discontinue water service to delinquent sewer users.

A contract under this subsection is enforceable without the approval of the Indiana utility regulatory commission.

(e) The procedures in IC 36-9-25-11.5(a) through IC 36-9-25-11.5(e) apply to the discontinuance of water service to a delinquent sewer user under a contract between the board and a water utility described in subsection (d).

*As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.27-1995, SEC.7; P.L.34-1999, SEC.6.*

### **IC 36-9-23-7**

#### **Board; operation of works**

Sec. 7. After the completion or acquisition of the sewage works, the board shall operate, manage, and control the works and may order and complete any extensions or improvements it considers necessary. The board shall adopt rules for the use and operation of the sewage works and of other sewers and drains connected to the works, to the extent that they may affect the operation of the works.  
*As added by Acts 1981, P.L.309, SEC.96.*

### **IC 36-9-23-8**

#### **Board; restoration of works**

Sec. 8. If requested to do so by the proper authority, the board shall, to the extent possible from money provided under this chapter, restore to their original condition any public ways or public works damaged by the board in the performance of its duties.  
*As added by Acts 1981, P.L.309, SEC.96.*

### **IC 36-9-23-9**

**Board; authority relating to employees; payment of expenses**

Sec. 9. The board may employ, fix the compensation of, and prescribe the duties of engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and any other employees it considers necessary. The expenses incurred under this section shall be paid solely from money provided under this chapter. *As added by Acts 1981, P.L.309, SEC.96.*

**IC 36-9-23-10****Ordinance prior to construction or acquisition of works; contents; notice**

Sec. 10. (a) Before the construction, acquisition, or lease of any sewage works under this chapter, the municipal legislative body shall adopt an ordinance or ordinances:

- (1) setting forth a brief general description of the works and, if the works are to be constructed, a reference to the plans and specifications prepared and filed by an engineer chosen by the board;
- (2) setting forth the cost of the works, as estimated by the engineer;
- (3) ordering the construction, acquisition, or lease of the works;
- (4) setting forth an estimate of the fees for the several classes of users or property to be served;
- (5) ordering the issuance of revenue bonds of the municipality under this chapter, in the amount necessary to pay the cost of the works; and
- (6) containing any other necessary provisions.

(b) Unless all or part of the works is being constructed in compliance with an order of the department of environmental management to abate water pollution, notice of the adoption and the purport of the ordinance or ordinances shall immediately be given by publication in accordance with IC 5-3-1.

*As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.143-1985, SEC.197; P.L.35-1990, SEC.69.*

**IC 36-9-23-11****Cost estimate**

Sec. 11. The engineer's estimate of costs under section 10(a)(2) of this chapter must include:

- (1) the cost of acquiring or constructing the sewage works;
- (2) the cost of all property, easements, franchises, and other rights considered necessary or convenient for the works;
- (3) interest on bonds before and during the construction or acquisition, and for a period not exceeding twenty-four (24) months after completion of the construction or acquisition;
- (4) engineering expenses, including expenses for plans, specifications, and surveys;
- (5) legal expenses;
- (6) expenses for estimates of cost and of revenues;
- (7) administrative expenses; and

- (8) other expenses necessary or incidental to:
  - (A) determining the feasibility of the works;
  - (B) financing the works;
  - (C) constructing or acquiring the works; and
  - (D) placing the works in operation.

*As added by Acts 1981, P.L.309, SEC.96.*

#### **IC 36-9-23-12**

##### **Petition objecting to construction or acquisition of works; court hearing; notice; bond; further proceedings on project prohibited if petition sustained**

Sec. 12. (a) This section does not apply to undertakings in compliance with orders of the department of environmental management for which no objections are authorized.

(b) Forty (40) or more owners of property connected or to be connected to and served by sewage works authorized by an ordinance under section 10(a) of this chapter may file a written petition objecting to the construction or acquisition of the works. The petition must be filed with the municipal legislative body, must contain the names and addresses of the petitioners, and must set forth the following objections:

- (1) The works are not required by the public needs.
- (2) The cost of the proposed works would be excessive considering the value of the service to be rendered to the affected community.
- (3) Any other ground of objection.

The petition shall be filed within twenty (20) days after the publication of notice under section 10(b) of this chapter.

(c) Unless the proposed works are abandoned, the municipal clerk shall file in the office of the clerk of the circuit or superior court of the county a copy of the ordinance or ordinances together with the petition. The court shall then set the matter for hearing at the earliest date possible, which must be within twenty (20) days after the filing of the petition with the court. The court shall send notice of the hearing by certified mail to the municipality and to the first ten (10) signers of the petition at the addresses shown on the petition. All interested parties shall appear in the court without further notice, and the municipality may not conduct any further proceedings concerning the works until the matters presented by the petition have been heard and determined by the court.

(d) The petitioners shall file with their petition a bond in the sum and with the security fixed by the court. The bond must be conditioned on the petitioners' payment of all or part of the costs of the hearing and any damages awarded to the municipality if the petition is denied, as ordered by the court.

(e) Upon the date fixed in the notice, the court shall, without a jury, hear the evidence produced. The court may confirm the decision of the municipal legislative body or sustain the objecting petition. The order of the court is final and conclusive upon all parties to the proceeding and parties who might have appeared at the

hearing, subject only to the right of direct appeal. All questions that were presented or might have been presented are considered to have been adjudicated by the order of the court, and no collateral attack upon the decision of the municipal legislative body or order of the court is permitted.

(f) If the court sustains the petition, or if it is sustained on appeal, the municipal legislative body may not institute any further proceedings for the construction of the sewage works described in the ordinance or ordinances for a period of one (1) year after the date of the order, unless the construction is required by a subsequent order of the state department of environmental management to abate water pollution.

*As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.143-1985, SEC.198.*

### **IC 36-9-23-12.5**

#### **User moving to new residence; forwarding final bill**

Sec. 12.5. Whenever a sewer user moves to a different residence from the one being supplied sewer service, but within the same municipality, the sewer utility shall forward the user's final sewer bill to the new address.

*As added by P.L.349-1985, SEC.4.*

### **IC 36-9-23-13**

#### **Preliminary expenses; payment from general fund; repayment from bond proceeds**

Sec. 13. (a) All necessary preliminary expenses actually incurred by the board before the issuance and delivery of revenue bonds, including expenses incurred in:

- (1) making surveys;
- (2) estimating costs and revenues;
- (3) employing engineers or other employees;
- (4) giving notices; and
- (5) taking options;

may be paid in the manner prescribed by this section.

(b) The board shall, from time to time, certify the items of expense to the municipal fiscal officer, directing him to pay the amounts certified. The fiscal officer shall draw a warrant or warrants in the correct amounts on the general fund, without appropriation. If there is no money in the general fund, the fiscal officer shall request the municipal legislative body to transfer from other funds of the municipality an amount sufficient to meet the items of expense, or to make a temporary loan for this purpose. The legislative body shall comply with the request promptly.

(c) Money transferred under subsection (b) shall be repaid by the board to the fund from which it was taken, out of the first proceeds of the sale of revenue bonds and before any other disbursements are made from those proceeds. The amount advanced to pay the preliminary expenses constitutes a first charge against the proceeds resulting from the sale of the revenue bonds until repaid.

*As added by Acts 1981, P.L.309, SEC.96.*

#### **IC 36-9-23-14**

**Condemnation; authority; security for damages to owner from failure to accept and pay for property; purchase or condemnation of existing works; option or contract; repair estimate**

Sec. 14. (a) A municipality may, in the manner prescribed by IC 32-24, condemn:

- (1) sewage works; and
- (2) any land, easements, franchises, and other property it considers necessary for the construction of sewage works or for improvements to sewage works.

However, the municipality may pay for any property condemned or purchased only from money provided under this chapter.

(b) In any proceedings to condemn, orders that are just to the municipality and to the owners of the property to be condemned may be made. An undertaking or other security securing the property owners against any loss or damage resulting from the failure of the municipality to accept and pay for the property may be required, but the undertaking or security imposes liability upon the municipality only in the amount that may be paid from money provided under this chapter.

(c) If the board wants to purchase sewage works, it may obtain and exercise an option for the purchase of the works, or may enter into a contract for the purchase in the manner and under the terms and conditions that it considers proper.

(d) If the board wants to purchase or condemn sewage works already constructed, it must, at or before the time of adoption of the ordinance authorizing the acquisition, determine what repairs, replacements, additions, and other actions are required to make the works effective for their purpose. An estimate of the cost of these actions shall be included in the estimate of cost made under section 11 of this chapter. These actions shall be taken upon the acquisition of the works, as a part of the cost of the acquisition.

*As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.2-2002, SEC.122.*

#### **IC 36-9-23-15**

**Acquisition of property subject to lien or other encumbrance**

Sec. 15. Property upon which any lien or other encumbrance exists may not be acquired under this chapter unless, at the time the property is acquired, a sufficient sum of money is deposited in trust to pay and redeem the lien or encumbrance in full.

*As added by Acts 1981, P.L.309, SEC.96.*

#### **IC 36-9-23-16**

**Sewage treatment plant prerequisite; contracts and revenues; construction of connecting sewers; payment of cost; effect on maturity date of bonds**

Sec. 16. (a) A municipality that does not have a sewage treatment

plant, and wants to acquire, construct, improve, operate, and maintain sewage works other than a sewage treatment plant, may proceed under this chapter only if it first contracts for the required treatment of the sewage emanating from its works.

(b) A municipality owning and operating facilities for sewage treatment may contract to treat all or part of the sewage of:

- (1) any other municipality;
- (2) any facility of the department of correction; or
- (3) if a contract described in subdivision (2) is in effect, any person or entity, a municipal corporation, a private corporation, or a federal government facility that is located within five (5) miles of the sewer line connecting the municipality to the facility of the department of correction under the contract.

The contracts must be authorized by ordinance and are subject to approval by the department of environmental management according to rules adopted by the water pollution control board as to the sufficiency of the provision for sewage treatment.

(c) Unless otherwise provided in the authorizing ordinance or governing indenture, the revenues received by the owner under the contract are considered a part of the revenues of the owner's sewage treatment facilities, and shall be applied in accordance with the applicable statutes.

(d) The necessary intercepting and connecting sewers and appurtenances to connect the sewage treatment facilities and sewage works of the contracting parties may be constructed in part or in whole by either of the contracting parties, as provided in the contract. For a municipality, the money to pay for this construction may be provided by the issuance of bonds under the applicable statutes, as part of the cost of the facilities or works of the respective parties.

(e) All bonds issued under this section are payable before the expiration date of the contract. The parties may contract for the terms of the bonds, and for any term or terms beyond the last maturity of the bonds.

*As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.143-1985, SEC.199; P.L.318-1989, SEC.1.*

## **IC 36-9-23-17**

### **Sources of funds**

Sec. 17. (a) This chapter does not authorize a municipality to make any contract or to incur any obligation that is not payable solely from money provided under this chapter.

(b) Money for the costs of the sewage works or any improvement of the works may be provided only:

- (1) by the issuance of revenue bonds of the municipality;
- (2) from a cumulative fund established by the municipality for that purpose; or
- (3) by grant or loan from the federal government or any of its agencies.

(c) A municipality obtaining a loan from the federal government or a federal agency may issue its obligations under this chapter to the



federal government or federal agency to evidence its indebtedness. The obligations are not a corporate indebtedness of the municipality, are payable solely from the revenues of the sewage works, and may be made of equal priority or subordinate to any other revenue bonds issued or to be issued under this chapter.

(d) Notwithstanding subsection (b), money to finance the construction of any of the self-liquidating works authorized by this chapter may be obtained from any state or federal agency.

(e) Notwithstanding subsection (b), any industrial cost recovery received by the municipality and required to be paid by industrial users under the terms of a federal grant are not considered revenues under this chapter. The municipal legislative body may use industrial cost recovery grants as provided by the terms of federal grants.

*As added by Acts 1981, P.L.309, SEC.96.*

### **IC 36-9-23-18**

#### **Bonds; liability of municipality; interest; redemption; form; registration; sale; temporary bonds; additional bonds; exemption from taxation**

Sec. 18. (a) Revenue bonds issued under this chapter are payable solely from the revenues of the sewage works for which they are issued, and are not a corporate indebtedness of the municipality.

(b) The revenue bonds bear interest at a rate not to exceed the maximum rate per annum specified by the municipal legislative body, payable annually or at shorter intervals, and mature at the time or times determined by ordinance.

(c) The revenue bonds may be made redeemable before maturity at the option of the municipality, to be exercised by the board, at not more than their par value plus a premium of five percent (5%), under the terms and conditions fixed by the ordinance authorizing the issuance of the bonds.

(d) The principal and interest of the revenue bonds may be made payable in any lawful medium.

(e) The ordinance authorizing the issuance of the revenue bonds must determine the form of the bonds, including any interest coupons to be attached to them, and must fix the denomination or denominations of the bonds and the place or places of payment of their principal and interest, which may be at any bank or trust company in Indiana or another state.

(f) The revenue bonds must contain a statement on their face that the municipality is not obligated to pay the principal or interest on them, except from the special fund provided from the net revenues of the sewage works.

(g) The revenue bonds are negotiable instruments.

(h) Provision may be made for the registration of any of the revenue bonds in the name of the owner as to principal alone, or as to both principal and interest, but fully registered bonds shall be made convertible to coupon bonds at the option of the registered owner.

(i) The revenue bonds shall be executed in the same manner as

other revenue bonds issued by municipalities are executed.

(j) The revenue bonds shall be sold by the municipal fiscal officer in the manner that is determined to be in the best interests of the municipality, but at not less than par value and only at public sale in accordance with the statutes concerning the sale of municipal bonds.

(k) Before the preparation of the definite revenue bonds, temporary revenue bonds may be issued with or without coupons. The temporary revenue bonds, which shall be issued in the manner prescribed by this section, may be exchanged for the definite revenue bonds when they are issued.

(l) If the proceeds of the revenue bonds are less than the cost of the sewage works, additional revenue bonds may be issued under this section to provide the amount of the deficit. Unless otherwise provided in the ordinance authorizing the first issue, or in the trust indenture authorized by section 22 of this chapter, the additional revenue bonds are considered part of the first issue and are entitled to payment from the same fund, without priority for the first issue.

(m) Subject to the provisions and limitations of any ordinance or trust indenture pertaining to any outstanding revenue bonds, additional bonds payable from the revenues of the sewage works may be authorized and issued in the manner prescribed by this section, for the purpose of improving any works acquired or constructed under this chapter.

(n) Revenue bonds issued under this section are exempt from taxation for all purposes.

*As added by Acts 1981, P.L.309, SEC.96.*

### **IC 36-9-23-19**

#### **Bonds; actions to contest validity; limitations**

Sec. 19. Any action to contest the validity of revenue bonds issued under this chapter must be brought at least five (5) days before the advertised date for the sale of the bonds.

*As added by Acts 1981, P.L.309, SEC.96.*

### **IC 36-9-23-20**

#### **Bonds; disposition of proceeds; lien of holders or trustee**

Sec. 20. (a) The first proceeds of any revenue bonds issued under this chapter shall be used to repay all amounts advanced for preliminary expenses under section 13 of this chapter. The remaining proceeds of the bond issue shall be applied to the cost of acquiring, constructing, or improving the sewage works.

(b) After the payments required by subsection (a) have been made, any proceeds of the bond issue that have not been spent shall be deposited in the sinking fund established by section 21 of this chapter.

(c) The holders of the revenue bonds, or the trustees under section 22 of this chapter, have a lien on the bond proceeds until they are applied under this section.

*As added by Acts 1981, P.L.309, SEC.96.*

### **IC 36-9-23-21**

#### **Bonds; sinking fund**

Sec. 21. At or before the time of issuance of revenue bonds under this chapter, the municipal legislative body, by ordinance, shall:

- (1) establish a sinking fund for the payment of:
  - (A) the principal of and interest on the bonds; and
  - (B) the charges of banks or trust companies for making payment of the principal or interest; and
- (2) pledge the net revenues of the sewage works, after the payment of the reasonable expense of operation, repair, and maintenance of the works, to the payment of the expenses described in subdivision (1).

The ordinance may also provide for the accumulation of reasonable reserves in the sinking fund as a protection against default, and for the payment of premiums on bonds retired by call or purchase under this chapter.

*As added by Acts 1981, P.L.309, SEC.96.*

### **IC 36-9-23-22**

#### **Bonds; security by trust indenture permitted; terms of indenture**

Sec. 22. (a) The municipal legislative body may secure revenue bonds issued under this chapter by a trust indenture between the municipality and a corporate trustee, which may be any trust company or bank having the powers of a trust company in Indiana, or another state. However, such a trust indenture may not convey or mortgage any part of the sewage works.

(b) The ordinance authorizing the revenue bonds may provide that:

- (1) the trust indenture may contain reasonable provisions for protecting and enforcing the rights and remedies of the bondholders, including covenants setting forth the duties of the municipality and the board in relation to:
  - (A) the construction, acquisition, improvement, operation, repair, maintenance, and insurance of the sewage works; and
  - (B) the custody, safeguarding, and application of all money; and
- (2) the works shall be contracted for, constructed, and paid for under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers or their successors, assigns, or nominees, who may be given the right to specify the security to be given by contractors and by any depository of the proceeds of bonds, revenues of the works, or other money pertaining to the works.

(b) The trust indenture may set forth the rights and remedies of the bondholders and trustee, restricting the individual right of action of bondholders as is customary in a trust indenture securing bonds and debentures of corporations. Except as otherwise provided in this chapter, the municipal legislative body may, by ordinance or in the trust indenture, specify:

- (1) the officer, board, or depository that shall collect the

proceeds of the sale of the bonds and the revenues of the sewage works; and

(2) the method of disbursing the proceeds and revenues.

*As added by Acts 1981, P.L.309, SEC.96.*

### **IC 36-9-23-23**

#### **Bonds; enforcement rights of holders; receivership**

Sec. 23. (a) The rights granted by this section are subject to any restrictions contained in the ordinance authorizing the issuance of revenue bonds or in any trust indenture securing the bonds.

(b) The holder of any revenue bonds or any coupons attached to them, and the trustee, if any, may, either at law or in equity, protect and enforce all rights granted by this chapter or under the ordinance or trust indenture, including the making and collecting of reasonable and sufficient fees for services rendered by the sewage works.

(c) If the principal or interest of any of the revenue bonds is not paid on the date named in the bonds for payment, any court having jurisdiction of the action may appoint a receiver to administer the sewage works on behalf of the municipality, the bondholders, and the trustee, if any. The receiver may:

(1) charge and collect fees sufficient to provide for the payment of the expenses of operation, repair, and maintenance of the works;

(2) pay any revenue bonds and interest outstanding; and

(3) apply the revenues in conformity with this chapter, the ordinance authorizing the bond issue, and the trust indenture, if any.

*As added by Acts 1981, P.L.309, SEC.96.*

### **IC 36-9-23-24**

#### **Fees; municipality subject to fees of sewage works**

Sec. 24. The municipality is subject to the fees established under this chapter or to fees established in harmony with this chapter, for services rendered the municipality, and shall pay the fees when due. The fees are considered part of the revenues of the sewage works and are subject to the disposition authorized or required for other revenues of the works.

*As added by Acts 1981, P.L.309, SEC.96.*

### **IC 36-9-23-25**

#### **Fees; factors used to establish; persons obligated to pay; disposition of certain fees; adoption of different schedules permitted**

Sec. 25. (a) The municipal legislative body shall, by ordinance, establish just and equitable fees for the services rendered by the sewage works, and provide the dates on which the fees are due.

(b) Just and equitable fees are the fees required to maintain the sewage works in the sound physical and financial condition necessary to render adequate and efficient service. The fees must be sufficient to:

- (1) pay all expenses incidental to the operation of the works, including legal expenses, maintenance costs, operating charges, repairs, lease rentals, and interest charges on bonds or other obligations;
- (2) provide the sinking fund required by section 21 of this chapter;
- (3) provide adequate money to be used as working capital; and
- (4) provide adequate money for improving and replacing the works.

Fees established after notice and hearing under this chapter are presumed to be just and equitable.

(c) The fees are payable by the owner of each lot, parcel of real property, or building that:

- (1) is connected with the sewage works by or through any part of the municipal sewer system; or
- (2) uses or is served by the works.

Unless the municipal legislative body finds otherwise, the works are considered to benefit every lot, parcel of real property, or building connected or to be connected with the municipal sewer system as a result of construction work under the contract, and the fees shall be billed and collected accordingly.

(d) The municipal legislative body may use one (1) or more of the following factors to establish the fees:

- (1) A flat charge for each sewer connection.
- (2) The amount of water used on the property.
- (3) The number and size of water outlets on the property.
- (4) The amount, strength, or character of sewage discharged into the sewers.
- (5) The size of sewer connections.
- (6) Whether the property has been or will be required to pay separately for any part of the sewage works.
- (7) Whether the property, although vacant or unimproved, is benefited by a local or lateral sewer because of the availability of that sewer. However, the owner must have been notified, by recorded covenants and restrictions or deed restrictions in the chain of title of his property, that a fee or assessment for sewer availability may be charged, and the fee may reflect only the capital cost of the sewer and not the cost of operation and maintenance of the sewage works.
- (8) The cost of collecting, treating, and disposing of garbage in a sanitary manner, including equipment and wages.
- (9) The amount of money sufficient to compensate the municipality for the property taxes that would be paid on the sewage works if the sewage works were privately owned.
- (10) Any other factors the legislative body considers necessary.

Fees collected under subdivision (8) may be spent for that purpose only after compliance with all provisions of the ordinance authorizing the issuance of the revenue bonds for the sewage works. The board may transfer fees collected in lieu of taxes under subdivision (9) to the general fund of the municipality.

(e) The municipal legislative body may exercise reasonable discretion in adopting different schedules of fees, or making classifications in schedules of fees, based on variations in:

- (1) the costs, including capital expenditures, of furnishing services to various classes of users or to various locations; or
- (2) the number of users in various locations.

*As added by Acts 1981, P.L.309, SEC.96. Amended by Acts 1981, P.L.317, SEC.23; P.L.35-1990, SEC.70.*

### **IC 36-9-23-26**

#### **Fees; hearing; notice; adoption; readjustment**

Sec. 26. (a) After the introduction of the ordinance establishing fees under section 25 of this chapter, but before it is finally adopted, the municipal legislative body shall hold a public hearing at which users of the sewage works, owners of property served or to be served by the works, and other interested persons may be heard concerning the proposed fees. Notice of the hearing, setting forth the proposed schedule of fees, shall be:

- (1) published in accordance with IC 5-3-1;
- (2) mailed to owners of vacant or unimproved property if the ordinance includes a fee for sewer availability to vacant or unimproved property; and
- (3) mailed to users of the sewage works located outside the municipality's corporate boundaries.

The notice may be mailed in any form so long as the notice of the hearing is conspicuous. The hearing may be adjourned from time to time.

(b) After the hearing, the municipal legislative body shall adopt the ordinance establishing the fees, either as originally introduced or as modified. A copy of the schedule of fees adopted shall be kept on file and available for public inspection in the offices of the board and the municipal clerk.

(c) The fees established for any class of users or property shall be extended to cover any additional property that is subsequently served and falls within the same class, without any hearing or notice.

(d) The municipal legislative body may change or readjust the fees in the same manner by which they were established.

(e) Fees collected under this chapter are considered revenues of the sewage works.

*As added by Acts 1981, P.L.309, SEC.96. Amended by Acts 1981, P.L.45, SEC.62; P.L.77-1991, SEC.4.*

### **IC 36-9-23-26.1**

#### **Objections to rates and charges; bonds; hearings**

Sec. 26.1. (a) Owners of property connected or to be connected to and served by the sewage works authorized under this chapter may file a written petition objecting to the rates and charges of the sewage works so long as:

- (1) the petition contains the names and addresses of the petitioners;

(2) the petitioners attended the public hearing provided under section 26 of this chapter;

(3) the written petition is filed with the municipal legislative body within five (5) days after the ordinance establishing the rates and charges is adopted under section 26 of this chapter; and

(4) the written petition states specifically the ground or grounds of objection.

(b) Unless the objecting petition is abandoned, the municipal clerk shall file in the office of the clerk of the circuit or superior court of the county a copy of the rate ordinance or ordinances together with the petition. The court shall then set the matter for hearing at the earliest date possible, which must be within twenty (20) days after the filing of the petition with the court. The court shall send notice of the hearing by certified mail to the municipality and to the first signer of the petition at the address shown on the petition. All interested parties shall appear in the court without further notice, and the municipality may not conduct any further proceedings concerning the rates and charges until the matters presented by the petition have been heard and determined by the court.

(c) At the discretion and upon direction of the court, the petitioners shall file with the petition a bond in the sum and with the security fixed by the court. The bond must be conditioned on the petitioners' payment of all or part of the costs of the hearing and any damages awarded to the municipality if the petition is denied, as ordered by the court.

(d) Upon the date fixed in the notice, the court shall, without a jury, hear the evidence produced. The court may confirm the decision of the municipal legislative body or sustain the objecting petition. The order of the court is final and conclusive upon all parties to the proceeding and parties who might have appeared at the hearing, subject only to the right of direct appeal. All questions that were presented or might have been presented are considered to have been adjudicated by the order of the court, and no collateral attack upon the decision of the municipal legislative body or order of the court is permitted.

(e) If the court sustains the petition, or if it is sustained on appeal, the municipal legislative body shall set the rates and charges in accordance with the decision of the court.

*As added by P.L.77-1991, SEC.5.*

### **IC 36-9-23-27**

#### **Fees; collection upon commencement of construction; amount**

Sec. 27. After a contract for the construction of sewage works has been let and actual work has commenced, the municipality may bill and collect fees for the services to be rendered, in an amount sufficient to pay:

(1) the interest on the revenue bonds; and

(2) other expenses payable before the completion of the works.

*As added by Acts 1981, P.L.309, SEC.96.*

**IC 36-9-23-28****Deposit to ensure payment of fees; amount of deposit; refund; forfeiture; use to pay judgment; unclaimed deposits**

Sec. 28. (a) The legislative body of a municipality that operates sewage works under this chapter may, by ordinance, require the owners, lessees, or users of property served by the works to pay a deposit to ensure payment of sewer fees.

(b) The deposit required may not exceed the estimated average payment due from the property served by the sewage works for a three (3) month period. The deposit must be retained in a separate fund.

(c) The deposit, less any outstanding penalties and service fees, shall be refunded to the depositor after a notarized statement from the depositor that as of a certain date the property being served:

- (1) has been conveyed or transferred to another person; or
- (2) no longer uses or is connected with any part of the municipal sewage system.

A statement under subdivision (1) must include the name and address of the person to whom the property is conveyed or transferred.

(d) If a depositor fails to satisfy costs and fees within sixty (60) days after the termination of his use or ownership of the property served, he forfeits his deposit and all accrued interest. The forfeited amount shall be applied to the depositor's outstanding fees. Any excess that remains due after application of the forfeiture may be collected in the manner prescribed by section 31 or 32 of this chapter.

(e) A deposit may be used to satisfy all or part of any judgment awarded the municipality under section 31 of this chapter.

(f) A deposit made under this section that has remained unclaimed by the depositor for more than seven (7) years after the termination of the services for which the deposit was made becomes the property of the municipality. IC 32-34-1 (unclaimed property) does not apply to a deposit described in this subsection.

*As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.236-1993, SEC.2; P.L.31-1995, SEC.8; P.L.2-2002, SEC.123.*

**IC 36-9-23-28.5****Unclaimed overpayments of sewer fees becoming property of municipality**

Sec. 28.5. (a) This section does not apply to a deposit made under section 28 of this chapter.

(b) IC 32-34-1 does not apply to an overpayment described in subsection (d).

(c) As used in this section, "payor" refers to the owner, lessee, or user of property served by the sewage works who has paid for service from the sewage works.

(d) An overpayment of sewer fees that remains unclaimed by a payor for more than seven (7) years after the termination of the service for which the overpayment was made becomes the property of the municipality.



*As added by P.L.40-1996, SEC.12. Amended by P.L.2-2002, SEC.124.*

### **IC 36-9-23-29**

#### **Connections to sewer by abutting property; approval required; fees; liens; disposition of fees**

Sec. 29. (a) If, as part of the construction of sewage works under this chapter, a municipality constructs a sewer suitable for use as a local or lateral sewer by abutting or adjoining property, it may charge a fee for connections to the sewer. The fee must be based on the pro rata cost of constructing a local or lateral sewer sufficient to serve the property.

(b) The board may approve or disapprove applications for connections and may fix the amount of the connection fee.

(c) A person who applies for a connection shall agree to pay the connection fee. If payment is not made as agreed, the fee constitutes a lien on the property for which the connection is made. Such a lien may be enforced in the manner prescribed by section 34 of this chapter.

(d) The municipal legislative body shall determine by ordinance whether the proceeds of connection fees collected under this section and other laws are to be used as:

- (1) net revenues of the sewage works;
- (2) payment toward the cost of construction of the works; or
- (3) payment toward the cost of improving the works in the future.

*As added by Acts 1981, P.L.309, SEC.96.*

### **IC 36-9-23-30**

#### **Municipal power to require connections to sewer or discontinuance of privies, cesspools, septic tanks, and similar structures; conditions; penalties; court order; attorney's fees**

Sec. 30. (a) Subject to subsection (b), a municipality that operates sewage works under this chapter or under any statute repealed by IC 19-2-5-30 (repealed September 1, 1981) may require:

- (1) connection to its sewer system of any property producing sewage or similar waste; and
- (2) discontinuance of the use of privies, cesspools, septic tanks, and similar structures.

(b) A municipality may exercise the powers granted by subsection (a) only if:

- (1) there is an available sanitary sewer within three hundred (300) feet of the property line of the affected property; and
- (2) it has given notice by certified mail to the property owner at the address of the property, at least ninety (90) days before the date specified for connection in the notice.

(c) A municipality may establish, enforce, and collect reasonable penalties for failure to make a connection under this section.

(d) A municipality may apply to the circuit or superior court for the county in which it is located for an order to require a connection

under this section. The court shall assess the cost of the action and reasonable attorney's fees of the municipality against the property owner in such an action.

*As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.3-1990, SEC.135.*

### **IC 36-9-23-31**

#### **Fees; nonpayment; delinquency penalty; civil action to recover**

Sec. 31. If fees assessed against real property under this chapter or any statute repealed by IC 19-2-5-30 (repealed September 1, 1981) are not paid within the time fixed by the municipal legislative body, they are delinquent. A penalty of ten percent (10%) of the amount of the fees attaches to the delinquent fees. The amount of the fee, the penalty, and a reasonable attorney's fee may be recovered by the board in a civil action in the name of the municipality.

*As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.3-1990, SEC.136.*

### **IC 36-9-23-32**

#### **Fees; nonpayment; creation of lien; priority; time of attachment; notice; subsequent owners; release**

Sec. 32. (a) Fees assessed against real property under this chapter or under any statute repealed by IC 19-2-5-30 constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (b) and (c), the lien attaches when notice of the lien is filed in the county recorder's office under section 33 of this chapter.

(b) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before the conveyance to the subsequent owner. If the property is conveyed before the lien can be filed, the municipality shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not more than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

(c) A lien attaches against real property occupied by someone other than the owner only if the utility notified the owner within twenty (20) days after the time the utility fees became sixty (60) days delinquent. However, the utility is required to give notice to the owner only if the owner has given the general office of the utility written notice of the address to which the owner's notice is to be sent.

(d) The municipality shall release:

- (1) liens filed with the county recorder after the recorded date of conveyance of the property; and
- (2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner, and that the purchaser

has not been paid by the seller for the delinquent fees.  
*As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.131-2005, SEC.7.*

### **IC 36-9-23-33**

#### **Unpaid fees and penalties**

Sec. 33. (a) An officer described in subsection (b) may defer enforcing the collection of unpaid fees and penalties assessed under this chapter until the unpaid fees and penalties have been due and unpaid for at least ninety (90) days.

(b) Except as provided in subsection (l), the officer charged with the collection of fees and penalties assessed under this chapter shall enforce their payment. As often as the officer determines is necessary in a calendar year, the officer shall prepare either of the following:

(1) A list of the delinquent fees and penalties that are enforceable under this section, which must include the following:

(A) The name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent.

(B) A description of the premises, as shown by the records of the county auditor.

(C) The amount of the delinquent fees, together with the penalty.

(2) An individual instrument for each lot or parcel of real property on which the fees are delinquent.

(c) The officer shall record a copy of each list or each individual instrument with the county recorder who shall charge a fee for recording the list or each individual instrument in accordance with the fee schedule established in IC 36-2-7-10. The officer shall then mail to each property owner on the list or on an individual instrument a notice stating that a lien against the owner's property has been recorded. Except for a county having a consolidated city, a service charge of five dollars (\$5), which is in addition to the recording fee charged under this subsection and under subsection (f), shall be added to each delinquent fee that is recorded.

(d) This subsection applies only to a county containing a consolidated city. Using the lists and instruments prepared under subsection (b) and recorded under subsection (c), the officer shall certify to the county auditor a list of the liens that remain unpaid according to a schedule agreed upon by the county treasurer and the officer for collection with the next cycle's property tax installment. The county and its officers and employees are not liable for any material error in the information on the list.

(e) Using the lists and instruments prepared under subsection (b) and recorded under subsection (c), the officer shall, not later than ten (10) days after the list or each individual instrument is recorded under subsection (c), certify to the county auditor a list of the liens that remain unpaid for collection in the next May. The county and its officers and employees are not liable for any material error in the information on this list.

(f) The officer shall release any recorded lien when the delinquent fees, penalties, service charges, and recording fees have been fully paid. The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10.

(g) On receipt of the list under subsection (e), the county auditor of each county shall add a fifteen dollar (\$15) certification fee for each lot or parcel of real property on which fees are delinquent, which fee is in addition to all other fees and charges. The county auditor shall immediately enter on the tax duplicate for the municipality the delinquent fees, penalties, service charges, recording fees, and certification fees, which are due not later than the due date of the next May installment of property taxes. In a county having a consolidated city, the delinquent fees, penalties, service charges, and recording fees are due not later than the due date of the next installment of property taxes. The county treasurer shall then include any unpaid charges for the delinquent fee, penalty, service charge, recording fee, and certification fee to the owner or owners of each lot or parcel of property, at the time the next cycle's property tax installment is billed.

(h) After certification of liens under subsection (e), the officer may not collect or accept delinquent fees, penalties, service charges, recording fees, or certification fees from property owners whose property has been certified to the county auditor. This subsection does not apply to a county containing a consolidated city.

(i) If a delinquent fee, penalty, service charge, recording fee, and certification fee are not paid, they shall be collected by the county treasurer in the same way that delinquent property taxes are collected.

(j) At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all fees, charges, and penalties that have been collected. The county auditor shall deduct the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the municipality. The county treasurer shall retain the service charges and certification fees that have been collected, and shall deposit them in the county general fund.

(k) Fees, penalties, and service charges that were not recorded before a recorded conveyance shall be removed from the tax roll for a purchaser who, in the manner prescribed by section 32(d) of this chapter, files a verified demand with the county auditor.

(l) A board may write off a fee or penalty under subsection (a) that is for less than forty dollars (\$40).

*As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.354-1987, SEC.1; P.L.45-1990, SEC.8; P.L.1-1993, SEC.249; P.L.57-1993, SEC.18; P.L.88-1995, SEC.11; P.L.236-1997, SEC.1; P.L.10-1997, SEC.36; P.L.98-2000, SEC.29; P.L.171-2002, SEC.2; P.L.174-2003, SEC.1.*

#### **IC 36-9-23-34**

**Liens; foreclosure; attorney's fees**

Sec. 34. (a) A municipality or board may foreclose a lien established by this chapter in order to collect fees and penalties. The municipality or board shall recover the amount of the fees and penalties, and a reasonable attorney's fee. The court shall order the sale to be made without relief from valuation or appraisal laws.

(b) Except as otherwise provided by this chapter, actions under this chapter are subject to the general statutes regarding municipal public improvement assessments.

*As added by Acts 1981, P.L.309, SEC.96.*

#### **IC 36-9-23-35**

##### **Proceedings under other chapters not required; powers of department of environmental management, water pollution control board, and state department of health not affected**

Sec. 35. No proceedings other than those prescribed by this chapter are required for:

- (1) the construction or acquisition of sewage works;
- (2) the issuance or sale of bonds; or
- (3) the establishment of fees;

under this chapter. However, the functions, powers, and duties of the department of environmental management, the water pollution control board, and the state department of health are not affected by this chapter.

*As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.143-1985, SEC.200; P.L.2-1992, SEC.894.*

#### **IC 36-9-23-36**

##### **Municipal powers; areas outside corporate boundaries**

Sec. 36. A municipality may exercise powers granted by this chapter in areas within ten (10) miles outside its corporate boundaries. However, this mileage limitation does not apply to the provision of sewage treatment service for an entity that is described in section 16(b)(2) of this chapter.

*As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.318-1989, SEC.2.*